IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1697 OF 2006

Pennzoil-Quaker State India Limited .. Petitioner.
V/s.
The Union of India & Others .. Respondents.

Mr.Prakash Shah i/b. M/s.PDS Legal for the petitioner.
Mr.R.V. Desai, senior counsel with Mr.A.S. Rao i/b. Dr.T.C. Kaushik for the respondents.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 13TH APRIL, 2006.

P.C. :

Rule. Returnable forthwith. The ad vocate on record for the revenue waives service.

2. We heard the senior counsel and counsel for the parties for final disposal of the writ petition.

3. The submission of the counsel for the petitioner is that no notice of personal hearing was served upon the petitioner and it was for this reason that the petitioner could not put his appearance before the Tribunal on 6th December, 2005. However, the Tribunal in its order dated 6th December, 2005 inaccurately recorded about the non-appearance of the applicants despite notice. The counsel for the petitioner submits that in the application made by the petitioner seeking modification of order dated

6th December, 2005, this ground was specifically set up but the Tribunal in its order dated 10th February, 2006 did not deal with this aspect at all.

4. By our order dated 28th March, 2006, we called for the original papers of application No.E/S/3159/05 in Appeal No.E/3597/05 along with the copy of notice of hearing sent to the petitioner and the acknowledgement of service.

5. Mr.R.V. Desai, senior counsel for the revenue upon perusal of the original record submits that though the copy of personal hearing notice is available on record but there is nothing to indicate that the said notice was served upon the petitioner.

6. As there is nothing on record to show that the petitioner was served with the notice of hearing on 6th December, 2005, the observation made by the Tribunal in its order dated 6th December, 2005 about non-appearance of the petitioner despite notice does not appear to be correct and though in the application for modification of order dated 6th December, 2005, the aforesaid point was specifically set up, yet the Tribunal in its order dated 10th February, 2005 overlooked and ignored this aspect.

7. In view of this, it is not possible to

sustain the orders dated 6th December, 2005 and 10th February, 2006.

8. The result is that we allow the writ petition and set aside the orders dated 6th December, 2005 and 10th February, 2006. The Tribunal shall consider the application for waiver of pre-deposit afresh. The petitioner is directed to appear before the Tribunal on 24th April, 2006. The Tribunal may hear the application for waiver of pre-deposit made by the petitioner on that date or any other date as may be convenient.

9. We clarify that no notice shall now be given by the Tribunal to the petitioner for hearing of the application for waiver of pre-deposit and if on 24th April, 2006 or any other date that may be fixed by the Tribunal, the petitioner fails to appear, the Tribunal shall be free to pass appropriate order.

10. Rule is disposed of accordingly. No costs.

11. The Registry is directed to transmit the record of Appeal No.E/3597/05 back to the Tribunal immediately.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)